

DEM-DEC Global Research Update – May 2019

Tom Gerald Daly

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Tenth Global Research Update since DEM-DEC was launched

This tenth monthly update was issued on 17 May 2019 and is [now available on DEM-DEC](#). Sincere thanks to [DEM-DEC REsearch Editors Kuan-Wei Chen](#) and Anant Sangal, who assisted in production of this Update.

Additions in the May Update include:

- New research worldwide from April and early May 2019
- A significant list of additions suggested by DEM-DEC Users
- A growing list of forthcoming research, and
- A list of resources recently added to the DEM-DEC [Links](#) section

Identifying Themes

In each monthly Update DEM-DEC Director Dr Tom Gerald Daly selects key themes. The aim is simply to provide ‘added value’ by helping users to navigate the Update, and to provide some limited commentary, especially on very recent research. Although it is impossible to capture every dimension of the issues covered in this Update, six key themes can be picked out.

1 Two Landmark Books from Leading Scholars

This Global Research Update has been delayed a little to wait for the publication of two landmark books by leading scholars on constitutionalism and democracy, from Europe and the USA respectively – Wojciech Sadurski ([Poland's Constitutional Breakdown](#)) and Bruce Ackerman ([Revolutionary Constitutions: Charismatic Leadership and the Rule of Law](#)). The books are very different: Sadurski's is a single case-study expressly seeking to anatomise the dismantling of liberal democratic institutions in Poland since the Law and Justice Party (PiS) entered government in October 2015, but with clear resonance for European and global democracy-watchers. It was also not quite planned, but a diversion from another book Sadurski was already writing (see an [author interview here](#)). Ackerman's is the first of a three-volume series on the ‘Rise of World Constitutionalism’ and, while highly relevant for anyone interested in democratic decay, analyses key questions (e.g. the roots of Poland's democratic malaise, as well as constitutionalism in South Africa and France, among others) more obliquely. Keep an eye out for a review of Ackerman's book by Tomasz Konieczny. I will be reviewing Sadurski's book in the *European Constitutional Law Review* and discussing it at a book panel ([Panel #182](#)), alongside leading and emerging scholars, at the International Society of Public Law (ICON-S) annual conference in Chile.

2 A Critical Mass of Scholarship on Democratic Threats in Poland

Sadurski's book represents the capstone of a critical mass of scholarship on threats to liberal democracy in Poland, across multiple disciplines, which has rapidly expanded during the past year. Building on a range of research on Poland in the main DEM-DEC Bibliography and other Updates to date, in this Update alone we have, in the [Hague Journal on the Rule of Law special issue on 'Rule of Law Decay'](#) (April 2019): an article from Sadurski himself, on the transformation of the Constitutional Tribunal from independent organ to 'governmental enabler'; Radosław Markowski on authoritarian clientelism since 2015; and Marta Bucholc on memory laws and democratic backsliding – which resonates with the special section on ['Poland's Wars of Symbols'](#) in the journal *East European Politics and Societies: and Cultures* (May 2019). [Pablo Castillo-Ortiz](#) includes Poland as one of three case-studies in his article on illiberal abuse of constitutional courts in the *European Constitutional Law Review* (published online on 8 May 2019), while [Renáta Uitz's guest editorial](#) in the same edition, and [Dimitry Kochenov's forthcoming article](#) in the *Polish Yearbook of International Law* (recently posted on SSRN) discuss action against Poland at the EU level,. Forthcoming research includes two articles by Tímea Drinóczi & Agnieszka Bieł-Kaca on Hungary and Poland (see p.24 of this Update).

3 Reappraisal and Reform of Law and Politics in the USA

Perhaps the largest – and most rapidly growing – body of scholarship prompted by concerns regarding threats to liberal democracy, or at least perceptions that democratic practice is changing, is in the USA. Three items in this Update point to the intellectual energy in this area. In the *Columbia Law Review Online* (April-May 2019), Jed Handelsman Shugerman sets out an interesting argument against (mis)using the term ['constitutional hardball'](#) – intended to denote legitimate, if aggressive, constitutional political moves. But the label “hardball” – to encompass “illegitimate, fundamentally undemocratic tactics”. Also in the CLR Online (May 2019) Tabatha Abu El-Haj continues a developing conversation with Michael Kang on the [appropriate approach to reform of the US political-party system](#), agreeing with Kang that there can be no return to a lost era of old-style machine politics and mass membership, but arguing that the response cannot be a policy focus on responsible party behaviour but a broader reform agenda that seeks to marry the inclusiveness of the past and the different means of association of the present. Finally, a forthcoming Pepperdine Law Review article by John Yoo sets out a [defence of the Electoral College](#), cautioning against any overreaction to the College's failure to filter out a candidate such as Trump in 2016, and offering that a system of direct election could present a higher risk of danger of tyranny by the majority. Finally, in a thought-provoking forthcoming article in the *Drake Law Review*, Richard Albert examines whether [constitutional reformers in the USA may end up pursuing unconventional methods](#) to overcome the barriers standing in the way of any constitutional amendment.

4 Understanding Voters Better

As discussed in the March Update, 2019 is a critical year in terms of elections, with voters going to the polls in major elections in the EU, India, and Poland, among others. A number of items in this Update are useful to help us better understand voter behaviour. A [new policy report by the Institute for Future Studies](#) examines those voting for the far-right (or at least ‘far-right-lite’) Sweden Democrats (now well-established as Sweden’s third-largest party), asking “Who are they, where do they come from, and where are they headed?”. The authors, Kirsti Jylhä, Jens Rydgren, and Pontus Strimling, observe that SD voters come from both the right and the left, primarily share a critical view of immigration, but beyond this it is not entirely clear what they have in common. Another [new policy paper by the Bertelsmann Foundation \(Stiftung\)](#), suggests that many voters are voting against the centre-ground parties rather than strongly in favour of challenger parties. An [article by Philipp Dreyer and Johann Bauer](#) in the *West European Politics* journal (January 2019), suggested for addition by a DEM-DEC user, indicates (on the basis of cross-country data from 1977-2016) that political parties respond to greater voter polarisation by adopting more extreme positions, but that this effect declines as voters’ propensity to abstain decreases (which is a flipside to recent findings by [Jennifer McCoy and Murat Somer](#) (See Theme 1-February Update), suggesting that polarisation largely results from the activity of ‘political entrepreneurs’).

5 Democratic Decay (and Breakdown) Outside the West

Various items in this Update remind us that democratic decay is also a concern outside the West (however we may define ‘the West’). In the *German Law Journal*’s first issue on populism for its twentieth anniversary, Satoshi Yokodaido analyses [‘constitutional stability’ in Japan](#), arguing that it is not due to popular endorsement of the 1947 Constitution, but in constitutional pathologies that leave the Constitution open to fundamental reinterpretation by political actors. It is notable that a [forthcoming collection](#) edited by Yoichi Funabashi and G. John Ikenberry (due out in October 2019) suggests that the absence of “virulent strains of populism” in Japan may soon change due to deterioration of stabilising forces through a rapidly aging population, widening intergenerational inequality, and high levels of public debt. Elsewhere, two policy documents on disinformation and democracy – in [the Philippines](#) and [the EU](#) – underscore that democracies of all hues are facing some similar challenges. Aziz Huq, in a forthcoming article, examines four judgments in which the [Constitutional Court of South Africa](#) has addressed state capture under President Zuma as a threat to “constitutional democracy.” Finally, an IACL-AIDC Blog Symposium on the (constitutional) [crisis in Venezuela](#) provides not useful information on the nature of the crisis, but also highlights the need for expert analysis (from a variety of political and disciplinary perspectives) in a sea of superficial, tendentious, and misleading commentary.

6 The ‘C’ Word: Interesting Trends in Comparative Analysis

In one of my ICONnect Blog columns on democratic decay, published in March 2017 ([‘The “C word”: Democratic Decay and the New Frontiers of Comparative Law’](#)), I offered that:

democratic decay is pushing us from a long-held view of comparative constitutional analysis as a choice to a new reality where it is becoming a necessity. Decay, by presenting a novel and multifaceted challenge for democratic governance in specific states, requires scholars, policymakers, and institutions such as courts to look outside their own systems for guidance.

Of course, the importance of comparative constitutional analysis (incorporating both comparative law and comparative political studies) is evident throughout the burgeoning literature on democratic decay: analysis of Poland almost inevitably draws comparative lessons from Hungary, for instance, while US scholarship had drawn on examples from not only liberal democratic states (e.g. Poland) but also hybrid regimes (e.g. Turkey) and authoritarian states (e.g. Egypt).

Perhaps one of the most interesting trends is a growing comparison between states that are not ordinarily paired, such as Venezuela and Turkey: in particular, a recently-minted doctor, Orçun Selçuk, has just completed a political science doctoral thesis on ‘Populism and Leader Polarization in Venezuela, Ecuador, and Turkey’, which broadly examines the relationship between populism and polarization. (Congratulations Orçun!) Although it must be understood on its own merits, the Turkish experience offers many lessons. Those wishing to read more deeply about the Turkish experience will also be happy to hear that Ertug Tombus is working on a manuscript, titled *Life-Cycle of a Populist: Populism and Its Trajectory in Turkey*. Having recently heard Ertug speak at Princeton in March, I am sure that it will be an important work. By the end of this month a work aimed at a popular audience, by Ece Temelkuran, will be published: [How to Lose a Country: The 7 Steps from Democracy to Dictatorship](#) (see a good review [here](#)). Yeşim Arat and Evket Pamuk also have a book due out in September 2019, [Turkey Between Democracy and Authoritarianism](#).

The DEM-DEC Bibliography

The [DEM-DEC Main Bibliography](#) (finalised on 24 June 2018) presents a global range of research on democratic decay. It has a strong focus on research by public lawyers – spanning constitutional, international and transnational law – but also includes key research from other disciplines, as well as policy texts. Updates to the Bibliography are issued during the first week of every month, based on new publications and suggestions from users of DEM-DEC. All updates should be read in conjunction with the main bibliography on DEM-DEC.

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DEM-DEC Launch Podcast

Have you listened to the DEM-DEC Launch Podcast yet? The panel discussion to formally launch DEM-DEC on 22 October was broadcast by ABC Radio National's 'Big ideas' programme on 27 and 28 November and is [now available as a podcast](#). The [launch programme and details](#) are on DEM-DEC.

